

Comparative Constitutional Law: Course Information and Syllabus

General Information

Course Number: 0508

Thursdays, 4.15–5.45 pm

This is a ZOOM only class (podcast will be available on Fridays after session).

ZOOM Link is available on OLAT (Link: <https://bit.ly/3bHr3dQ>).

Readings

This course is reading-intensive. All those uncomfortable with reading should not consider taking this class. (You have been warned.)

All assigned readings listed below will be made available on OLAT in the course of the semester. It is expected that students come prepared so that they can answer questions on the assigned readings and are able to participate in the in-class discussion on ZOOM. Reading the textbook is not mandatory but highly recommended. Excerpts from the textbook will not be made available on OLAT.

The course is based on

- Mark Tushnet, *Advanced Introduction to Comparative Constitutional Law*, 2nd ed., Edward Elgar: Cheltenham, 2018 (Tushnet 2018)
- Norman Dorsen/Michael Rosenfeld/Andr s Saj /Susanne Baer/Susanna Mancini (eds.), *Comparative Constitutionalism: Cases and Materials*, 3rd ed., West Academic Publishing: St. Paul, 2016 (Dorsen et al. 2016)

Exam and Grading

Depending on the class size, the examination will be oral or 2 short response papers (to be determined). The final grade will depend on the examination (70 %) and in-class discussion (30 %).

Office hours

Please contact me by email (tilmann.altwicker@rwi.uzh.ch) and we arrange a meeting in my office or on ZOOM.

Syllabus and Assigned Readings

September 19 *Approaches to Comparative Constitutional Law*

Textbook: What is comparative constitutional law? Tushnet 2018, 1–10.

Assignment 1: Why comparative constitutional law? Dorsen et al. 2016, 1–6.

Assignment 2: Methods of Comparative Constitutional Law. Jackson, VC, ‘Comparative Constitutional Law: Methodologies’, in Rosenfeld/Sajó (eds), *The Oxford Handbook of Comparative Constitutional Law* (OUP 2012), 54–72.

September 24 *Constitutions and Constitutionalism (I)*

Textbook: Constitution-making. Tushnet 2018, 11–48.

Assignment 3: Constitutional models (I). Grimm, D, ‘Types of constitutions’, in Rosenfeld/Sajó (eds), *The Oxford Handbook of Comparative Constitutional Law* (OUP 2012), 98–132.

Assignment 4: Constitutional models (II). Excerpts in Dorsen et al. 2016, 51–72.

Assignment 5: Constitutional systems of the world (I): US Constitutional Law. Jackson, VC, ‘US Constitutional Law and History’, in Masterman/Schütze (eds), *Cambridge Companion to Comparative Constitutional Law* (CUP 2019), 113–140.

October 1 *Constitutions and Constitutionalism (II)*

Assignment 6: What is constitutionalism? Excerpts in Dorsen et al. 2016, 33–51.

Assignment 7: Constitutional identity. Federal Constitutional Court (Germany), Lisbon Treaty (Judgment of 30 June 2009) [Press Release]; Faraguna, P, ‘Identity’, in *Max Planck Encyclopedia of Comparative Constitutional Law* (March 2020).

Assignment 8: Constitutional amendment. Venice Commission, Report on Constitutional Amendment, 19 January 2010, CDL-AD(2010)001 (excerpts).

Assignment 9: Constitutional endurance. Ginsburg, T, ‘Constitutional endurance’, in Ginsburg/Dixon (eds), *Comparative Constitutional Law* (Elgar 2011), 112–125.

Assignment 10: Evaluating constitutional reform. Venice Commission, Albania: On Draft Constitutional Amendments Enabling the Vetting of Politicians, 17 December 2018, Opinion No. 942/2018, CDL-AD(2018)034 (excerpts).

October 8 *Constitutions and Constitutionalism (III)*

Assignment 11: Migration of constitutional ideas/citing to foreign precedent. Excerpts in Dorsen et al. 2016, 7–19.

Assignment 12: Constitutional transplants. Halmai, G, ‘The use of foreign law in constitutional interpretation’, in Rosenfeld/Sajó (eds), *The Oxford Handbook of Comparative Constitutional Law* (OUP 2012), 1328–1348.

Assignment 13: Constitutional systems of the world (II): UK Constitutional law. Elliott, M, 'The United Kingdom Constitution', in Masterman/Schütze (eds), *Cambridge Companion to Comparative Constitutional Law* (CUP 2019), 69–91.

October 15 *Constitutional Adjudication (I)*

Textbook: Constitutional review. Tushnet 2018, 49–82.

Assignment 14: Principles and models of constitutional review. Excerpts in Dorsen et al. 2016, 153–187.

Assignment 15: Constitutional courts. Stone Sweet, A, 'Constitutional Courts', in Rosenfeld/Sajó (eds), *The Oxford Handbook of Comparative Constitutional Law* (OUP 2012), 816–830.

October 22 *Constitutional Adjudication (II)*

Assignment 16: Procedure of constitutional review. Excerpts in Dorsen et al. 2016, 190–196.

Assignment 17: Constitutional interpretation. Excerpts in Dorsen et al. 2016, 196–238; 247–250.

October 29 *Constitutional Rights (I)*

Assignment 18: Constitutional rights. Gearty, C, 'Human Rights Law', in Masterman/Schütze (eds), *Cambridge Companion to Comparative Constitutional Law* (CUP 2019), 291–311.

Assignment 19: Life and death. Excerpts in Dorsen et al. 2016, 736–779.

November 5 *Constitutional Rights (II)*

Assignment 20: Freedom of expression: Fundamentals. Excerpts in Dorsen et al. 2016, 1001–1021.

Assignment 21: Freedom of expression: Internet censorship. Excerpts in Dorsen et al. 2016, 1052–1059.

Assignment 22: Freedom of expression: Racist speech. Excerpts in Dorsen et al. 2016, 1113–1115.

November 12 *Constitutional Rights (III)*

Assignment 23: Equality and non-discrimination: Theory. Baer, S, 'Equality', in Rosenfeld/Sajó (eds), *The Oxford Handbook of Comparative Constitutional Law* (OUP 2012), 982–1001.

Assignment 24: Equality and non-discrimination: Practice. Excerpts in Dorsen et al. 2016, 839–904.

November 19 *Constitutional Rights (IV)*

Textbook: Constitutional rights' analysis. Tushnet 2018, 83–106.

Assignment 25: Proportionality and balancing. Excerpts in Dorsen et al. 2016, 238–246.

Assignment 26: Constitutional systems of the world (III): India. Pillay, A, 'The Constitution of the Republic of India', in Masterman/Schütze (eds), *Cambridge Companion to Comparative Constitutional Law* (CUP 2019), 141–170.

November 26 *Structure of Government (I)*

Textbook: The structure of government. Tushnet 2018, 107–128.

Assignment 27: Democracy. Frankenberg, G, 'Democracy', in Rosenfeld/Sajó (eds), *The Oxford Handbook of Comparative Constitutional Law* (OUP 2012), 250–268.

Assignment 28: The legislative branch. Excerpts in Dorsen et al. 2016, 269–306.

December 3 *Structure of Government (II)*

Assignment 29: Referendum: Theory. Morel, L, 'Referendum', in Rosenfeld/Sajó (eds), *The Oxford Handbook of Comparative Constitutional Law* (OUP 2012), 501–528.

Assignment 30: Referendum: Practice. Excerpts in Dorsen et al. 2016, 306–327.

Assignment 31: Constitutional systems of the world (IV): Switzerland. Oesch, M, 'Constitutional Law', in Thommen (ed), *Introduction to Swiss Law* (Sui Generis 2018), 135–162.

December 10 *Structure of Government (III)*

Assignment 32: Models of federalism. Excerpts in Dorsen et al. 2016, 427–469.

Assignment 33: Executive power. Excerpts in Dorsen et al. 2016, 328–358.

Assignment 34: Counter-terrorism and the constitution. Excerpts in Dorsen et al. 2016, 1622–1650.

December 17 *Decline of Constitutionalism?*

Assignment 35: Illiberalism, populism, and the constitution. Landau, D, 'Abusive Constitutionalism', *U.C.D. Law Review* 47 (2013), 189–260.

Assignment 36: Turkey's authoritarian turn. Erensü, S/Alemdaroğlu, A, 'Dialectics of Reform and Repression: Unpacking Turkey's Authoritarian "Turn"' *Review of Middle East Studies* 52 (2018), 16–28.